

## **EVIDENCE — Foundation — Identification is sufficient to establish foundation for admission of evidence — Revised 3/2010**

A foundation for introduction of evidence may be laid either through identification testimony or by establishing a chain of custody. Rule 901(a), Ariz. R. Evid.; *State v. Amaya-Ruiz*, 166 Ariz. 152, 169, 800 P.2d 1260, 1277 (1990); *State v. Ashelman*, 137 Ariz. 460, 465, 671 P.2d 901, 906 (App.1983); *State v. Macumber*, 119 Ariz. 516, 521-22, 582 P.2d 162, 167-68 (1978). Rule 901(a), Ariz. R. Evid., provides that "[t]he requirement of . . . identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

A party can satisfy this requirement in a variety of ways: a witness can testify that the item is what it is claimed to be, Rule 901(b)(1), Ariz. R. Evid., or the evidence can be shown to have distinctive characteristics which, taken in conjunction with circumstances, support a finding that it is what its proponent claims. Rule 901(b)(4), Ariz. R. Evid.; *State v. Emery*, 141 Ariz. 549, 551, 688 P.2d 175, 177 (1984). In *State v. Maximo*, 170 Ariz. 94, 97, 821 P.2d 1379, 1382 (App. 1991), the defendant dropped a knife after an assault, and his accomplice picked up the knife and fled with it. Later, three pieces of a knife were found in the accomplice's gym bag when he was arrested. At trial, the defendant objected to admission of the knife for lack of foundation. The Court of Appeals upheld the admission of the knife:

A proponent of evidence may satisfy foundation requirements with the identification testimony of a witness who has knowledge of the exhibit. *State v. Emery*, 141 Ariz. 549, 551, 688 P.2d 175, 177 (1984). The detective who arrested the accomplice and found the pieces of the knife identified the exhibit. This testimony was sufficient to establish foundation; the exhibit at trial was the disassembled knife that the accomplice

possessed at the time of his arrest. Foundation was established by showing that the exhibit at trial was the evidence collected from the accomplice.

*Id.*

If a witness is not completely sure of the identification, the witness's lack of certainty goes to the weight of the evidence, not its admissibility. In *State v. Romanosky*, 162 Ariz. 217, 782 P.2d 693 (1989), the defendant robbed a couple that had just returned to Phoenix from Florida and killed the husband. The defendant stole various items from the couple, including several souvenir Florida T-shirts the couple had just brought back from Florida. After the defendant was arrested, three T-shirts with Florida logos were found in a trash can in the trailer where he had been living. At trial, the surviving victim testified that the three T-shirts were "similar" to those she had purchased in Florida. On appeal, the defendant argued that the trial court erred by admitting the three T-shirts from the trailer due to lack of a proper foundation. The Arizona Supreme Court upheld the admission of the T-shirts:

The fact that [the victim] said the T-shirts were "similar" to the ones she purchased in Florida, instead of claiming to be able to positively identify them as hers, clearly goes only to the weight of the evidence, not to its admissibility. *See State v. Carriger*, 123 Ariz. 335, 599 P.2d 788 (1979), *cert. denied*, 444 U.S. 1049, 100 S.Ct. 741, 62 L.Ed.2d 736 (1980) (fact that no one could positively identify jewelry as part of the jewelry store's pre-robbery inventory goes to weight, not admissibility).

Under Rule 901(b)(4), the T-shirts were properly identified because they possessed distinctive characteristics, the Florida logos; that fact, taken in conjunction with the other facts of the case, support their admissibility under Rule 901. *State v. Blazak*, 114 Ariz. 199, 560 P.2d 54 (1977) (fact that accomplice could not be certain that the similar-appearing ski mask found on the alleged escape route was worn by defendant did not preclude its admittance).

*Id.* at 224, 782 P.2d at 700.

Photographs can be authenticated by someone other than the person who took the pictures. *Lohmeier v. Hammer*, 214 Ariz. 57, 61, 148 P.3d 101, 105. (App. 2006). The person authenticating the photographs need only be able to “attest that the photographs accurately portray the scene or object depicted.” *Id.*

Video recordings, such as surveillance tapes, can be authenticated when there is “sufficient evidence to support a jury finding that the offered evidence is what its proponent claims it to be.” *State v. Haight-Gyuro*, 218 Ariz. 356, 360, 186 P.3d 33, 37 (App. 2008), *quoting State v. Lavers*, 168 Ariz. 376, 386, 814 P.2d 333, 343 (1991).